

**U.S. CUBA DEMOCRACY PAC
(POLITICAL ACTION COMMITTEE)**

1200 West 49th Street
Hialeah, Florida 33012

October 23, 2006

Mr. Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 5830

Dear Mr. Jordan:

This letter is in response to a complaint (MUR 5830) received by the Federal Election Commission ("Commission") alleging violations by Respondents, the U.S.-Cuba Democracy PAC ("the PAC") (C00387720) and Mr. Gus Machado, Treasurer, of the Federal Election Campaign Act of 1971 ("FECA").

The complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW") contains many factual inaccuracies and mischaracterizations. The PAC was legally organized in May, 2003, and properly registered as an independent, non-connected political committee, pursuant to the requirements of FECA. (*See* Attachment A, Statement of Organization). Since its inception, the PAC has maintained its non-connected status by ensuring its organizational and financial independence. (*See* FEC Advisory Opinion 1997-15).

Count I

FECA and Commission regulations do not "prescribe qualifications on individuals who may establish, organize and direct a non-connected political committee; nor do they necessarily prohibit individuals who have some association with a corporation, labor organization or trade association from such activity." (*See* FEC Advisory Opinion 1984-12). The Treasurer of the PAC is Mr. Gus Machado. The operations of the PAC are under the control of a twenty-five (25) person Board of Directors. (*See* Attachment B, Article IV, Bylaws of PAC). Within the Board of Directors, the day-to-day management of the PAC is exercised by a seven (7) person Executive Committee. (*See* Attachment C, Article V, Bylaws of PAC).

1 2006 OCT 23 P 1:38

FED
OFFICE
L
CN

27044170664

27044170665

The Board of Directors is composed of:

- | | |
|-----------------------------|------------------------|
| 1. Cesar Alvarez, Esq. | 14. Benjamin Leon, Jr. |
| 2. Eduardo Arista, Esq. | 15. Raul Masvidal |
| 3. Victor Benitez, Jr. | 16. Ricardo Mayo |
| 4. Martin Caparros | 17. Pedro Munilla |
| 5. Mauricio Claver-Carone | 18. Mario Murgado |
| 6. Manuel Coto, M.D. | 19. Alicia Ortiz |
| 7. Carlos de Cespedes | 20. Sergio Pino |
| 8. Juan Delgado | 21. Anolan Ponce |
| 9. Remedios Diaz-Oliver | 22. Victor Pujals |
| 10. Marcelo Fanjul | 23. John Sagarribay |
| 11. Miguel Farra, Esq. | 24. Osmundo Sanchez |
| 12. Mario Ferro | 25. Roberto Sanchez |
| 13. Rodolfo Hernandez, M.D. | |

The Executive Committee is composed of:

- | | |
|-------------------------|------------------|
| 1. Manuel Coto, M.D. | 5. Raul Masvidal |
| 2. Juan Delgado | 6. Ricardo Mayo |
| 3. Remedios Diaz-Oliver | 7. Alicia Ortiz |
| 4. Gus Machado | |

Since the Board of Directors is composed of prominent community leaders that are also active in various other civic and charitable organizations, the PAC has created guidelines and procedures to prevent the possibility of any direct or implied affiliation. Pursuant to Section 4.05 of the PAC's bylaws, "no person shall be qualified to serve on the Board if his or her appointment would cause the PAC to be treated as a separate segregated fund of a corporation or labor organization under the Federal Election Campaign Act, or otherwise cause the PAC to act in an unlawful manner under any applicable law or regulation." (See Attachment B, Article, IV, Section 4.05, Bylaws of PAC).

The complaint falsely alleges that the PAC is connected to Cuba Democracy Advocates ("CDA"), an exempt nonprofit corporation based in the District of Columbia, due to the cross-directorship in both organizations by Messrs. Gus Machado and Mauricio Claver-Carone. At the time of the PAC's inception, Mr. Machado was in-fact an officer and director of Cuba Democracy Advocates. However, as clearly described and illustrated above, not only did this not legally impede him from his organizational role in the formation of the PAC, but it did not create any direct or implied affiliation with CDA, as the operational control of the PAC has always been exercised by an Executive Committee and Board of Directors, the overwhelming majority of whose Members have not had -- and still do not have -- any involvement in CDA whatsoever. (See FEC Advisory Opinions 1984-12 and 1997-15). Despite the legal feasibility for Mr. Machado to participate in both organizations without the implication of any sort of affiliation, Mr. Machado resigned as an officer and director of CDA in January, 2006, so as to not even create the appearance of any sort of affiliation. (See Attachment D, Letter of

27044170666

Resignation). As a result, Mr. Claver-Carone currently remains the only officer and director of CDA to also serve on the Board of Directors of the PAC. However, Mr. Claver-Carone is not the Executive Director of the PAC, nor is he a Member of the PAC's Executive Committee. The fact that Mr. Claver-Carone is merely one of twenty-five (25) members of the PAC's Board of Directors is clearly insufficient to establish, or even imply, any sort of operational conduct and control of the PAC by CDA.

The complaint proceeds to falsely allege that Mr. Claver-Carone's personal contributions, whether direct or in-kind, create an implied financial relationship between CDA and the PAC. Since its inception, the PAC has raised approximately \$1.25 million from nearly 3,000 contributors. All operational expenses of the PAC have been paid solely from contributions -- direct and in-kind -- to the PAC, and have been timely and diligently reported and itemized pursuant to FECA and Commission regulations. Not only is this allegation in the complaint legally unfounded, but impractical considering the minimal contributions by Mr. Claver-Carone, as compared to the overall amount of contributions and operational expenses of the PAC.

Count II

The PAC has operated -- and shall endeavor to continue operating -- above and beyond the minimal requirements in FECA and Commission regulations as regards its reporting and itemization responsibilities. The PAC requires that all contributions, be itemized with at least the donor's name and address, even if below the legal threshold. The purpose of the PAC's thoroughness is to enhance the screening of potential prohibited contributions and contributors, such as foreign nationals. The PAC has always been extremely diligent in its information-collection process, and has taken careful measures to preclude any potential direct and/or indirect prohibited contribution.

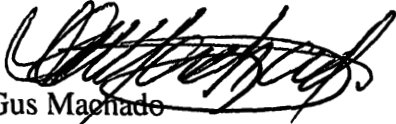
As it pertains to the management of the PAC, Section 4.05 of the PAC's bylaws clearly states that "no nonresident alien or foreign national shall be qualified to serve on the Board of Directors." (See Attachment B, Article, IV, Section 4.05, Bylaws of PAC). The PAC has not received any sort of contribution from Mr. Leopoldo Fernandez-Pujals -- as falsely alleged in the complaint -- or any other foreign national. Furthermore, neither Mr. Fernandez-Pujals, nor any other foreign national, has ever participated, or directly or indirectly influenced, in any decision-making process of the PAC. (See Attachment E, Gus Machado Affidavit). The Board of the Directors of the PAC is solely composed of citizens of the United States, and their participation is limited to their own personal will and volition.

Finally, the complaint seeks to mischaracterize the PAC's criteria for the candidates it supports. The PAC is an ideological committee that seeks to support pro-democracy candidates throughout the country. The candidates supported by the PAC have all been, at different times, strong advocates of freedom and democracy for the Cuban people. Any allegation that the PAC's contributions are defined by any particular vote is false.

Please do not hesitate to contact me with any further questions.

Thank you for your time and attention.

Sincerely,


Gus Machado
Treasurer

27044170867

27044170668

ATTACHMENT A

FEC
FORM 1

STATEMENT OF
ORGANIZATION

2003 JUN 18 P 10:10

Office Use Only

NAME OF
COMMITTEE (in full)

(Check if name
is changed)

Example: If typing, type
over the lines.

12FE4M5

IS-CUBA Democracy Political Action Committee

ADDRESS (number and street)

1200 West 49th Street

(Check if address
is changed)

Hialeah

FL

33012

CITY ▲

STATE ▲

ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS

ISCUBADEMOCRACYPOLITICALACTION@AOL.COM

COMMITTEE'S WEB PAGE ADDRESS (URL)

COMMITTEE'S FAX NUMBER

305-827-1216

2. DATE

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT

☒

NEW (N)

OR

☐

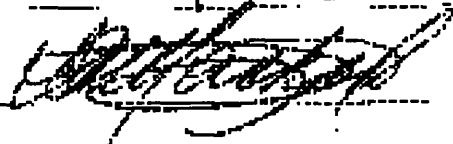
AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Gus Machado

Signature of Treasurer



Date

05 28 2003

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-434-8830
Local 202-694-1100

FEC FORM 1
(Revised 02/2003)

5. TYPE OF COMMITTEE (Check One)

- (a) ☐ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of
CandidateCandidate
Party AffiliationOffice
Sought:

House



Senate



President

State

District

- (c) ☐ This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of
Candidate

- (d) ☐ This committee is a ☐ (National, State or subcommittee) committee of the ☐ (Democratic, Republican, etc.) Party.

- (e) ☐ This committee is a separate segregated fund.

- (f) ☒ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee.

6. Name of Any Connected Organizations or Affiliated Committee

NONE

Mailing Address

CITY ▲

STATE ▲

ZIP CODE ▲

Relationship

Type of Connected Organization:



Corporation



Corporation with Capital Stock



Labor Organization



Membership Organization



Trade Association



Cooperative

Write or Type Committee Name

7. Custodian of Records: Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name GUS MACHADOMailing Address 1200 West 49th StreetHialeah FL 33012Title or Position CITY STATE ZIP CODE TREASURERTelephone number 305-820-2525

Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer GUS MACHADOMailing Address 1200 West 49th StreetHialeah FL 33012Title or Position CITY STATE ZIP CODE TREASURERTelephone number 305-820-2525

Full Name of Designated Agent

Mailing Address

Title or Position CITY STATE ZIP CODE

Telephone number

27044170671

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, trade accounts, rents, safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

BANK OF AMERICA

Mailing Address

100 SE 2ND STREET 47TH FLOOR

MIAMI

FL

33131

CITY ▲

STATE ▲

ZIP CODE ▲

Name of Bank, Depository, etc.

Mailing Address

CITY ▲

STATE ▲

ZIP CODE ▲

27044170672

27044170673

ATTACHMENT B

ARTICLE IV
Board of Directors

Section 4.01. Role and Privileges of the Board of Directors. The Board of Directors (the "Board") shall review Annual Reports issued by the Committee and make recommendations to the Committee regarding ways the PAC can work with candidates for political office to promote an unconditional transition in Cuba to democracy, the rule of law, and the free market.

Section 4.02. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect:

- (a) a copy of these Bylaws as amended to date;
- (b) any Annual Report issued pursuant to Section 5.03 herein;
- (c) a complete and accurate record of the proceedings of all Annual Meetings of the Board of Directors; and
- (d) a record of the current and former Directors, Voting Directors and Officers of the PAC showing each person's name, address and position.

Section 4.03. Composition. The Board of Directors shall consist of all the Executive Committee members and those individuals appearing in Exhibit "A" attached hereto, as amended from time to time, pursuant to Section 4.04 herein.

Section 4.04. Appointment and Removal. Directors shall be persons appointed by the Committee who shall meet such qualifications and requirements as from time to time may be established by the Committee. The Committee shall be the sole judge of the qualifications, if any, of Directors and its determination as to whether a person is or is not a Director shall be final. The Committee may from time to time and at any time create different classifications of Directors and prescribe different rights, privileges, qualifications or requirements of each class. Any or all of the Directors may be removed with or without cause by the Committee.

Section 4.05. Qualifications. A Director must be 18 years of age or older. No nonresident alien or foreign national shall be qualified to serve on the Board of Directors. No person shall be qualified to serve on the Board if his or her appointment would cause the PAC to be treated as a separate segregated fund of a corporation or labor organization under the Federal Election Campaign Act, or otherwise cause the PAC to act in an unlawful manner under any applicable law or regulation. If the Committee determines that such an unqualified person has been appointed to the Board, the Committee shall immediately remove such Director from the Board.

Section 4.06. Annual Meeting. An Annual Meeting of the Board of Directors shall be held once per year at a time and place and for any purpose(s) as determined by the Committee. The Committee shall provide each Director with notice of the time, place and purpose(s) of the Annual Meeting no less than thirty (30) days prior to the meeting date. The Committee may, from time to time, call Special Meetings of the Board subject the same notice requirements for the Annual Meeting.

27044170675

ATTACHMENT C

ARTICLE V
Executive Committee

Section 5.01. Powers of the Executive Committee. All powers of the PAC shall be exercised by, or under the direction of, the Executive Committee (the "Committee"). Members of the Committee shall be known as "Voting Directors". Unless otherwise provided herein, all decisions of the Executive Committee shall be made by a majority vote of the Voting Directors. In the event of a tie in any Executive Committee vote, the Treasurer's vote shall break the tie.

Section 5.02. Inspection by Voting Directors. Every Voting Director shall have the opportunity at any reasonable time to inspect at the principal office of the PAC any record kept by the Secretary pursuant to Section 6.08 herein.

Section 5.03. Annual Report. The Executive Director, under the direction of the Executive Committee, shall cause a report (the "Annual Report") to be sent to the Board of Directors within one hundred twenty (120) days after the end of each fiscal year of the PAC. The Annual Report shall contain the following information in reasonable detail:

- (a) the assets and liabilities of the PAC as of the end of the fiscal year;
- (b) the principal changes in assets and liabilities during the fiscal year;
- (c) the year-end review of receipts of the PAC for the fiscal year;
- (d) the year-end review of disbursements of the PAC for the fiscal year;
- (e) during election years, quarterly reviews of receipts and disbursement for the fiscal year;
- (f) any amendments to these By-laws;
- (g) a list of the Directors, Voting Directors and Officers as of the end of the fiscal year; and
- (h) any other information the Committee decides to include.

27044170677

Section 5.04. Number and Qualification. The number of Voting Directors constituting the entire Executive Committee of the PAC shall be seven (7). A Voting Director must be 18 years of age or older. No nonresident alien or foreign national shall be qualified to serve on the Committee. No person shall be qualified to serve on the Committee if his or her election would cause the PAC to be treated as a separate segregated fund of a corporation or labor organization under the Federal Election Campaign Act, or otherwise cause the PAC to act in an unlawful manner under any applicable law or regulation. In the event that such a person is elected to the Committee, as soon as that fact becomes known to any Voting Director, the Committee shall immediately remove such person from the Committee, pursuant to Section 5.06 herein.

Section 5.05. Term and Removal. Voting Directors shall serve until death, resignation or removal. A Voting Director may be removed only by a super majority of the Committee consisting of no less than five (5) Voting Directors if the Voting Director to be removed does not meet the qualifications of Section 5.05 herein, the Voting Director commits an illegal act, or the Voting Director behaves in a manner that is detrimental to the operation or reputation of the PAC.

Section 5.06. Vacancies. Any vacancy on the Committee shall be promptly filled by a unanimous vote of the remaining Voting Directors.

Section 5.07. Place of Meetings; Meetings by Telephone. Meetings of the Committee shall be held at the principal office of the PAC or at such other place as has been designated by the Committee. Any meeting may be held by conference telephone or similar communication equipment, so long as all the Voting Directors participating in the meeting can hear one another, and all such Voting Directors shall be deemed to be present in person at such meeting.

Section 5.08. Time of Meeting; Notice. Meetings of the Committee may be called for any purpose and at any time by the Treasurer or any two (2) Voting Directors.

(a) *Manner of Giving Notice.* Notice of the time and place of meetings shall be given to each Voting Director by one of the following methods:

- (i) by personal delivery of written notice;
- (ii) by first-class mail, postage prepaid;
- (iii) by telephone, either directly to the Voting Director or to a person at the Voting Director's office who would reasonably be expected to communicate that notice promptly to the Voting Director;
- (iv) by facsimile; or
- (v) by electronic mail.

All such notices shall be given or sent to the Voting Director's physical address, electronic mail address, facsimile number or telephone number as shown in the records of the PAC.

- 27044170678
- (b) *Time Requirements.* Notice sent by first-class mail shall be deposited in the United States mails at least ten (10) days before the time set for the meeting. Notice given by personal delivery, telephone, facsimile or electronic mail shall be delivered, telephone, faxed or e-mailed at least three (3) days before the time set for the meeting.
 - (c) *Notice Contents.* The notice shall state the time and purpose(s) of the meeting, and the place if the place is other than the principal office of the PAC.
 - (d) *Waiver of Notice.* Notice of a meeting need not be given to any Voting Director who signs a waiver of notice or a written consent to holding a meeting, whether before or after a meeting. The waiver of notice or consent need not specify the purpose(s) of the meeting. All such waivers, consents and approvals shall be filed with the corporate records. Notice of a meeting need not be given to any Voting Director who attends the meeting whether or not such Voting Director protests, before or at its commencement, the lack of notice to such Voting Director.

Section 5.09. Quorum. A majority of the Voting Directors shall constitute a quorum for the transacting of business. Every act or decision done or made by a majority of the Voting Directors present at a meeting duly held at which a quorum is initially present shall be regarded as a valid act or decision of the Committee. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Voting Directors, if any act or decision taken is approved by at least a majority of the required quorum for that meeting. Notwithstanding the foregoing, no quorum shall be present at any meeting where the Treasurer is not present.

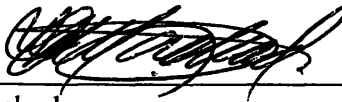
Section 5.10. Action Without a Meeting. Any act or decision of the Committee may be taken without a meeting, if all Voting Directors consent in writing to that act or decision. Such action by written consent shall have the same force and effect as any other validly approved action of the Committee. Such written consent or consents shall be filed with the corporate records of the Committee.

27044170679

ATTACHMENT D

RESIGNATION

I, Gus Machado, hereby resign as an Officer and Director of Cuba Democracy Advocates, effective as of the close of the Meeting of the Board of Directors of Cuba Democracy Advocates held January 5th, 2006.



Gus Machado

27044170630

27044170681

ATTACHMENT E

BEFORE THE FEDERAL ELECTION COMMISSION

U.S.-Cuba Democracy PAC
Gus Machado


}
}
}
}

MUR 5830

AFFIDAVIT OF GUS MACHADO

I, Gus Machado, hereby swear that the following information is based on my personal knowledge, that I am competent to testify, and that it is both true and correct:

1. I am the Treasurer of the U.S.-Cuba Democracy PAC ("the PAC").
2. The PAC is a non-connected political committee based in Hialeah, Florida.
3. I am a resident of the State of Florida and a Citizen of the United States of America.
4. The PAC is solely under the operational control of its Executive Committee and Board of Directors.
5. Neither Mr. Leopoldo Fernandez-Pujals, nor any other foreign national is, or has ever been, directly or indirectly involved in the decision making process of the PAC.
6. Any political contributions or volunteer activities I have ever undertaken have been solely pursuant to my personal will and volition.


Gus Machado

Dated: October 19, 2006

Signed and sworn to before me this 19 day of October, 2006.

Ana C. Arisso

NOTARY PUBLIC

My commission expires:



Ana C. Arisso
Commission #DD303689
Expires: Mar 25, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

27044170683